

June 20, 2019

Arizona Commissions on Appellate and Trial Court Appointments  
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Phoenix, Arizona 85007  
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Submitted via Email

**RE: Comments Regarding William G. Montgomery's Candidacy  
for Arizona Supreme Court**

Dear Commission on Appellate Court Appointments:

Lambda Legal is the oldest and largest national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV through impact litigation, education and public policy. We write to express serious concern about the possible appointment of William Montgomery to the Arizona Supreme Court. We shared the following concerns with the Commission on February 26, 2019, when Mr. Montgomery first sought appointment to the Arizona Supreme Court. With five new commissioners joining the Commission since the last interview and selection process for applicants to the Arizona Supreme Court, we feel it necessary to again express these concerns to the Commission.

Mr. Montgomery, current Maricopa County Attorney, has a record that reflects persistent, open hostility to the principles of equality, liberty, justice and dignity under the law for LGBT people and their families, among others. Accordingly, it appears unlikely that he would be able to provide impartial justice to LGBT people and their families if he were appointed to the Arizona Supreme Court, let alone the appearance of impartiality.

In 2015, after the U.S. District Court for the District of Arizona followed the decision of the Ninth Circuit Court of Appeals and struck down Arizona's ban on marriage for same-sex couples,<sup>1</sup> a same-sex couple in Maricopa County reached out to Mr. Montgomery's office to utilize the free legal assistance required to be available to married couples to help with the adoption of their son. They were told that same-sex couples were not approved to receive the free legal assistance.<sup>2</sup> When questioned, Mr. Montgomery maintained this position and indicated his belief that the Ninth Circuit's decision was only about marriage, not about other legal rights for same-sex couples and their families, such as adoption support.<sup>3</sup> Even though the Ninth Circuit's *Latta* decision rests in part on the fact that many same-sex couples are raising children

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<sup>1</sup> *Majors v. Horne*, 14 F.Supp.3d 1313 (Oct. 17, 2014), following *Latta v. Otter*, 771 F.3d 456 (9th Cir. Oct. 7, 2014).

<sup>2</sup> Michael Kiefer, *County Attorney Won't Help Gay Couple Adopt*, (April 8, 2015), THE ARIZONA REPUBLIC, available at, <https://www.azcentral.com/story/news/arizona/politics/2015/04/08/arizona-gay-couple-refused-adoption-help/25491619/>.

<sup>3</sup> *Id.*

and the importance of securing those family relationships legally, and even though the adoption right requested of his office (assistance with a stepparent adoption) flowed directly from the status of being married under Arizona law, Mr. Montgomery continued to insist that the *Latta* decision had no relevance. He refused to provide equal adoption-related benefits to same-sex couples who were legally married.

Mr. Montgomery did not stop there. After this incident, Mr. Montgomery sought to have legislation passed that would repeal the requirement that county attorneys provide free legal assistance to couples seeking to adopt children.<sup>4</sup> This legislation was passed by the Arizona Legislature in 2015, but was vetoed by Governor Ducey.<sup>5</sup> At the time of the veto, Mr. Montgomery's press aide indicated that he didn't anticipate Mr. Montgomery would continue to provide this legal aid, required by law, at least not to same-sex couples coming to his office for the help to which they were entitled.<sup>6</sup> Mr. Montgomery's actions indicated both a significant hostility to same-sex couples and an alarming lack of commitment to following the law.

But Mr. Montgomery's hostility extends not just to same-sex couples. In 2012, Mr. Montgomery was part of the Arizona State Bar's ER 8.4 Task Force, as he acknowledged in paragraph 53, page 23 of his application. The Task Force was established by the Arizona State Bar to explore possible action to be taken by the Bar before the Arizona Supreme Court with respect to amending Rule of Professional Conduct 8.4 for attorneys. This rule prohibits attorneys from manifesting bias or prejudice based on certain personal characteristics during an attorney's representation of a client. During his membership in this Task Force, Mr. Montgomery opposed any expansion of protections for transgender people in the Rules of Professional Conduct. He went so far as to suggest that if the Bar continued the work to make the rules more protective for transgender people, he and others would seek to render membership in the Bar voluntary including a requisite change in the manner of regulating the legal profession in Arizona.<sup>7</sup>

He maintained this overt hostility in the years that followed. In 2015, Mr. Montgomery, in his official-capacity, opposed efforts to have the Arizona Supreme Court update judicial ethics rules to include protections for transgender people. Those efforts were filed before the Arizona Supreme Court as Rule Change Petitions numbered R-15-0014 and R-15-0020. Mr. Montgomery's filing in R-15-0014 (attached with this email) indicates that he is strongly opposed to non-discrimination ethics rules that provide protections for specific classes of people,

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<sup>4</sup> Howard Fischer, *County Attorneys Can't Refuse to Help Gays with Adoptions*, (April 14, 2015), ARIZONA CAPITOL TIMES, available at, <https://azcapitoltimes.com/news/2015/04/14/county-attorneys-cant-refuse-to-help-gays-with-adoptions/>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Email attached with this letter.

particularly for those who are transgender. He also demonstrates a lack of understanding or any attempt in the intervening years to understand why there is a need for protections for transgender people in the court system. Any individual who does not believe that all people deserve access to the courts free of bias and prejudice is not fit for a judicial role.

Lambda Legal emphasizes this anti-transgender bias because our own investigation of the treatment of LGBT people within court systems and other governmental systems in this country discovered pervasive, especially troubling biases against transgender people.<sup>8</sup> The 2016 report of the *2015 U.S. Transgender Survey* confirmed in more extensive detail the gross mistreatment, harassment, and violence inflicted upon transgender Americans in nearly every aspect of life.<sup>9</sup> It is imperative that judicial officers sworn to uphold the constitution of any state and the United States Constitution understand that equal protection and other core constitutional guarantees protect transgender people just like everyone else, and that they act accordingly.

But, Mr. Montgomery has made clear over the course of many years that he is unwilling to treat LGBT people equally under the law. Given Mr. Montgomery's pattern of conduct, LGBT people in Arizona could not feel confident they would be facing a fair and impartial judge if they were to appear in front of him should he be appointed to the Court.

At a minimum, the Commission should investigate and evaluate the circumstances surrounding Mr. Montgomery's service on the ER 8.4 Task Force and his decision to deny same-sex married couples equal treatment before making any decision to recommend him for appointment to the Arizona Supreme Court.

Thank you for your time and consideration of this information. Please do not hesitate to contact us if you have questions by contacting Ethan Rice, Senior Attorney at [erice@lambdalegal.org](mailto:erice@lambdalegal.org) or (212) 809-8585.

Sincerely,

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<sup>8</sup> Lambda Legal, *Protected and Served?* (2012), available at <https://www.lambdalegal.org/protected-and-served>.

<sup>9</sup> S.E. James *et al.*, *Report of the 2015 U.S. Transgender Survey* (National Center for Transgender Equality, 2016), available at <http://www.ustranssurvey.org/>.